BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DEBORAH CHRIESTENSON	)	
Claimant	)	
VS.	)	
	)	Docket No. 247,036
RUSSELL STOVER CANDIES	)	
Respondent	)	
AND	)	
	)	
HARTFORD ACCIDENT AND INDEMNITY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the July 13, 2000 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

Claimant contends she was exposed to fumes while working for respondent that aggravated a preexisting condition of multiple chemical sensitivity.

After conducting a second preliminary hearing on July 11, 2000, Judge Avery found that claimant suffered from an occupational disease and, therefore, granted claimant's request for medical treatment.

Respondent and its insurance carrier contend Judge Avery erred. They argue that claimant failed to prove that she has an occupational disease that arose out of and in the course of employment with respondent. That is the only issue before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After reviewing the record compiled to date and the parties' arguments, the Appeals Board concludes that claimant is entitled to receive medical treatment under the Kansas Workers Compensation Act for exacerbations of her migraine headaches.

2. In April 1997, claimant began working for respondent. But before that date, claimant had been diagnosed as having multiple chemical sensitivity. According to the medical records entered into evidence, in 1986 claimant began having various symptoms. Those symptoms included headaches, vertigo, right arm tremors, jerking and cramping in the legs, myofascial pain and trigger points, concentration problems, speech difficulties, and seizures. Claimant believes her symptoms began as a result of new carpeting that was placed in her home. In 1996, ten years later, claimant's condition was diagnosed as multiple chemical sensitivity.

3. Claimant worked for respondent through mid-December 1998. While working for respondent, claimant contends her symptoms worsened because of exposures to fumes. Claimant describes a specific incident in approximately September 1998 when she was exposed to paint fumes and an incident in December 1998 when she was exposed to fumes from floor stripper and floor wax. Claimant alleges that because of those exposures, she has more frequent headaches, increased arm tremors, increased vertigo, increased concentration and speech problems, joint pain, numbness in the fingers and hand, and upper extremity and leg pain.

4. Despite being diagnosed with multiple chemical sensitivity in 1996 and, thus, intolerant of chemicals, claimant continued to smoke through January 2000.

5. The doctors who have treated claimant since April 1997 have varied opinions as to whether claimant's symptoms have been aggravated by exposures to fumes at work.

In July 1999, claimant's family physician, Dr. Richard L. Hull, wrote attorney William L. Phalen and advised that claimant's symptoms had been exacerbated by exposure to fumes at work. The doctor wrote:

> Ms. Chriestenson [claimant] has a long[-]standing history of chemical intolerance which is documented by a previous enviromental [sic] specialist. She had exerbation [sic] of symptoms after an exposure at work and she needs to be re-evaluated by an enviromental [sic] specialist in Wichita.

Dr. Hull believes there were several factors contributing to claimant's condition. The doctor recorded the following in his December 14, 1998 office notes:

> The patient is in for discussion of appointments and follow up from the workman's comp injury supposedly at Russell Stovers. She has seen Dr. Wolfe, the workman's comp doctor. At this time we are finding that she had the floor stripped and developed a severe headache and has had chemical intolerances since 1986 when she had a carpet high and [sic] formaldehyde placed in her house and lived in it and developed all kinds of neurological symptoms. She has been seen by several specialists in the past some of whom have agreed and some have disagreed with this diagnosis. Every time

> the patient gets around certain chemicals she seems to have an exacerbation of problems. She is a smoker which also contributes to this. She has had ligamentous instability from injuries. Part of her headache is tension and stress related in the occipital area particularly on the left which radiates into the left temple and in the past sclerotherapy has resolved these tension sites of her headaches and decreased the sensativity [sic] to the chemical affects [sic] to some extent. . . .

6. Lizbeth D. Cravens, M.D., who saw claimant through a referral by Dr. Hull, found it difficult to believe that claimant's problems were related to chemical exposure. In a June 1999 letter to Dr. Hull, Dr. Cravens wrote, in part:

> Deborah [claimant] again started on her insistence upon all her signs and symptoms being related to chemical exposure, insisting that none of the many doctors that have seen her were able to make that diagnosis because they were just unfamiliar with chemical exposure, and that she found a doctor somewhere in Kansas who specialized in the treatment of chemical toxicities, but that she could not come up with the $3,000.00 up front that he required in order to treat her.
>
> Ultimately, I told her that throughout her visits with me, I had given this whole question of chemical toxicity the benefit of the doubt, but certainly with more and more objective studies showing no significant abnormalities, it would be hard for me to support her contention that she has multiple problems related to chemical exposure.
>
> I have been telling her all along that I certainly do not have any expertise as far as chemical toxicity, and certainly now, after her repeated insistence that all of her problems are related to this, and that none of the medications that anybody has ever prescribed have worked in alleviating her signs and symptoms, I felt there was nothing more that I could offer her as far as either diagnosis or treatment.

But, as indicated above, the doctor admits lacking expertise in the area of chemical toxicity.

7. J. Woody Harlan, M.D., a neurologist in Dr. Craven's group, wrote in a March 1998 letter to Dr. Hull that he was skeptical that exposure to chemicals had caused all of claimant's symptoms. But Dr. Harlan did diagnose claimant as having a common migraine headache and noted that claimant daily smoked a pack of cigarettes.

8. Respondent's insurance carrier referred claimant to another neurologist, Donald K. Hopewell, M.D., who saw claimant in January 1999. Dr. Hopewell stated in a January 1999

letter to Dr. Brian Wolfe that exposure to fumes is a common trigger of migraine headaches. Dr. Hopewell wrote, in part:

> This is a woman who presents a consistent history of increase in headache and tremor in association with exposure to certain types of fumes and chemicals. While I have a difficult time putting together the pathophysiology of her complaints, she has been consistent and apparently has been told that she has this entity described as multiple chemical sensitivities. Patients certainly can have exacerbation of headache with exposure to certain kinds of smells. This is a relatively common phenomenon as a triggering factor for certain migraineurs. The tremor is harder to explain on that basis but if a patient becomes stressed, anxious, ill or worried, tremor certainly can become worse. There is a great deal about her physical examination which suggests that the findings are not entirely physiologic but I cannot state with absolutely [sic] certainty that everything that I am seeing here does not have a[n] anatomic or physiologic basis. The one entity that is present that I did not find in her previous records is evidence of a hereditary peripheral neuropathy based on her high arches, hammer toes, and sensory loss distally.
>
> Given the consistent history that the patient presents, the fact that she did clearly make these problems known prior to her employment and there was clear evidence of chemicals used around her at the time of her exacerbation, I think we have to assume that her complaints are valid. I have no way to either confirm or disprove her complaints with any type of diagnostic intervention and I would suggest approaching as she requests which is simple avoidance of exposure to these substances.

As the doctor noted that claimant's findings are not entirely physiologic, it is suggested, or at least implied, that a psychological evaluation may be helpful in determining the source of claimant's complaints.

9. Respondent and its insurance carrier then requested neurologist Jay S. Zwibelman, M.D., to evaluate claimant. In a March 5, 1999 letter, Dr. Zwibelman reported that he found an essentially normal neurologic examination and stated that it was possible that claimant's tremor was not organic. Additionally, the doctor reported that claimant's multiple trigger points and myofascial pain were not related to chemical exposure. In his April 14, 1999 report, the doctor stated unequivocally that claimant's chronic headaches and myofascial pain were not related to any chemical exposure at work. The doctor further stated that any exacerbation of claimant's headaches would only be temporary in nature. The doctor wrote:

> . . . I was finally able to reach Dr. Pierce, the toxicologist. We discussed the case at length. He has had extensive experience with multiple exposure to toxic chemicals. The exposure that Deborah had was quite brief. . . . Certainly headache could be seen with prolonged exposures of certain

> chemicals but this would only be temporary and not permanent. He knows of no situation where such a brief exposure had led to long-term headaches. . . . There is no solid evidence that multiple chemical sensitivity exist[s]. In fact there is more evidence to suggest the [sic] does not as there is no evidence of allergy. Deborah also claimed her chemical sensitivities even prior to this exposure. At the very most she could have experienced acute symptoms if in fact she was sensitive to chemicals. This would not induce a long-term headache. There is a larger body of evidence suggesting multiple chemical sensitivity is psychogenic. It's interesting to note that Deborah continues to smoke tobacco, which is a known extremely toxic chemical.

After stating the above, Dr. Zwibelman then recommended an inpatient pain program to treat claimant's headaches and her myofascial pain.

10. In January 2000, claimant saw physician William J. Rea, M.D. Dr. Rea operates the Environmental Health Center in Dallas, Texas, and holds himself out as being board-certified in environmental medicine. In a report dated April 10, 2000, Dr. Rea states that claimant has had a significant chemical exposure that has caused multi-organ system dysfunction. The doctor recommends medical treatment that would detoxify the chemicals in claimant's body.

11. At this juncture of the proceeding, the Appeals Board concludes that claimant has proven that she has exacerbated her migraine headaches as a result of smelling fumes at work. Based upon the evidence compiled to date, the Appeals Board is unable to find that claimant has aggravated the alleged preexisting chemical sensitivity problem. Claimant contends that she developed multiple chemical sensitivity as a result of exposures beginning in 1986, but she continued smoking and ingesting concentrated smoke and toxins on a daily basis for 13 or so years without experiencing any symptoms. Therefore, it is very difficult to understand how smoking would not affect claimant's condition but smelling other odors would.

At the first preliminary hearing held in this case in October 1999, claimant introduced an article from *Environmental Health Perspectives*. That article states that once the multiple chemical sensitivity syndrome occurs, a "spreading phenomenon" occurs and the person then becomes sensitive to unrelated chemicals such as perfume, tobacco smoke, auto exhaust, and newsprint. Page 748 of the article states, in part:

> Generally, many patients can identify specific circumstances that initiated their illnesses. Some say it began after an overwhelming exposure to chemicals, such as a spill on their job or exposure to pesticides. . . . Or MCS [multiple chemical sensitivity] can come on after a new, chronic, medium-level exposure, such as moving into a new house with significant emissions of volatile organic compounds from the building materials or the carpet. After the initial event, symptoms seem to wax and wane with low-level chemical

> exposure. When patients think they know the source of the irritant and remove it, symptoms disappear.
>
> Once the syndrome has been initiated, a "spreading phenomenon" reportedly occurs, in which sensitivity generalizes from the original trigger to low doses of multiple, chemically unrelated substances, such as perfume, tobacco smoke, auto exhaust, and newsprint. A majority of patients also report new sensitivities to common foods, alcoholic beverages, and drugs they have taken for years.

According to the above article, claimant's ability to continue to smoke without experiencing adverse symptoms runs counter to the theory of some clinical ecologists that multiple chemical sensitivity is caused by a defective immune system which either overreacts to chemicals that are introduced into the body or under reacts as it has lost some of its ability to protect the body against harmful substances.

12. Based upon the above, the Appeals Board concludes that claimant exacerbated her migraine headaches while working for respondent. Therefore, under the Kansas Workers Compensation Act, claimant is entitled to receive the reasonable and necessary medical treatment for that condition as long as the exacerbation exists. Conversely, claimant is not entitled to treatment for allegedly aggravating a preexisting condition of multiple chemical sensitivity.

WHEREFORE, the Appeals Board affirms the July 13, 2000 preliminary hearing Order to the extent that it found the exacerbation of claimant's migraine headaches compensable under the Kansas Workers Compensation Act. But the July 13, 2000 preliminary hearing Order is modified to the extent that it found claimant's alleged condition of multiple chemical sensitivity to be aggravated by working for respondent or compensable under the Act.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Brenden W. Webb, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director